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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,148	10/05/2004	Ruoxing Wang	21285-901	6425

47234 7590 09/28/2007  
LAW OFFICES OF KHALILIAN SIRA, LLC  
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POTOMAC, MD 20854

EXAMINER
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ZEMAN, ROBERT A

ART UNIT	PAPER NUMBER
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1645

MAIL DATE	DELIVERY MODE
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09/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/510,148

Applicant(s)

WANG ET AL.

Examiner

Robert A. Zeman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 9-15, 20-23 and 25-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 16-19, 24 is/are rejected.
- 7) ☒ Claim(s) 7 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I in the reply filed on 7-12-2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-51 are pending. Claims 9-15, 20-23 and 25-51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Claims 1-8, 16-19 and 24 are currently under examination.

### ***Claim Objections***

Claims 2 and 4 are objected for referring to a figure. It is suggested that the claim be rewritten to reference the SEQ ID NO: engendered by said figure.

Claims 7 and 8 are objected to as being dependent on a rejected claim. Said claims would be allowable if presented in independent form.

Claim 24 is objected to because of the following informalities: Said claims recites language drawn to non-elected inventions. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is rendered vague and indefinite by the use of the term "physiological conditions" It is unclear to what conditions said term is referring. On what physiology are said conditions being based? The cell? As written, it is impossible to determine the metes and bounds of the claimed invention.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 16-19 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruben et al. (WO 00/35937).

Ruben et al. disclose an isolated polynucleotide that has 100% sequence identity with SEQ ID NO:1 over at least 500 base pairs (see SEQ ID NO:23 and the alignment set forth below). Said nucleic acid also contains a guanine in position 1 and contains both TATA and CCAATA boxes. Ruben et al. further said nucleic acids can be incorporated into vectors and host

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cells which can be used to recombinantly express the encoded polypeptide (see abstract and claims 7-10) or kits (see page 191, lines 18-20).

Claims 1-6, 16-19 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruben et al. (U.S. Patent Publication US 2004/0253684).

Ruben et al. disclose an isolated polynucleotide that has 100% sequence identity with SEQ ID NO:1 over at least 500 base pairs (see SEQ ID NO:23 and the alignment set forth below). Said nucleic acid also contains a guanine in position 1 and contains both TATA and CCAATA boxes. Ruben et al. further said nucleic acids can be incorporated into vectors and host cells which can be used to recombinantly express the encoded polypeptide (see abstract and claims 7-10) or kits (see paragraph [0564]).

Qy	8238	GCAGGGGCTTAGATGCTGCTGCGCCATCCCTTACCTGTCTGTTTCTGTTTCTCCTTCTGT	8297
Db	8	GCAGGGGCTTAGATGCTGCTGCGCCATCCCTTACCTGTCTGTTTCTGTTTCTCCTTCTGT	67
Qy	8298	CCCTTCCCAGTCTCAGCACTGAGTCTCTTGCCATTGGCCTGGTGAGGGAAGGAGCTGCC	8357
Db	68	CCCTTCCCAGTCTCAGCACTGAGTCTCTTGCCATTGGCCTGGTGAGGGAAGGAGCTGCC	127
Qy	8358	AGCCCCACCCAACAGCTCAGGTTACAGAGAGAGTCACTTTCTTCCATTACTCACAGAGTA	8417
Db	128	AGCCCCACCCAACAGCTCAGGTTACAGAGAGAGTCACTTTCTTCCATTACTCACAGAGTA	187
Qy	8418	AACATCAAGGAAGGCCACTGATTGATTGACAGTGTCTGGGTCAGATGTCTATCCTTAGGC	8477
Db	188	AACATCAAGGAAGGCCACTGATTGATTGACAGTGTCTGGGTCAGATGTCTATCCTTAGGC	247
Qy	8478	CAGTCCCTGTGAACAAGGGGATGGGGTGTCTGCGTGGACCAGATCTGAAGCAAGGCCCA	8537
Db	248	CAGTCCCTGTGAACAAGGGGAT-GGGTGTCTGCGTGGACCAGATCTGAAGCAAGGCCCA	306
Qy	8538	TGCCTGGGGCCAGGGGGTGGGAACTATGGACCTCTCTCCCCACTGAGAACCCAGGGAGC	8597
Db	307	TGCCTGGGGCCA-GGGGTGGGAACTATGGACCTCTCTCCCCACTGAGAACCCAGGGAGC	365
Qy	8598	AGGTGAGGTGAAATTCTCTAGGGGAAGAGGGGCAAAATTGACAAGATAGCAGATGTCTA	8657
Db	366	AGGTGAGGTGAAATTCTCTAGGGGAAGAGGGGCAAAATTGACAAGATAGCAGATGTCTA	425

Qy	8658	CCATAC TGCTGTGGGGCCTGGTCCCTCC CAGAAGGAAAAACATAGTAA CAATAGAGTGGG	8717
Db	426	CCATAC TGCTGTGGGGCCTGGTCCCTCC CAGAAGGAAAAACATAGTAA CAATAGAGTGGG	485
Qy	8718	TCTCAC CCTCCACCTGGGTCTCAAGTAGGGTGTGGATGAGGACAATGGAAATGAAGGAAA	8777
Db	486	TCTCAC CCTCCACCTGGGTCTCAAGTAGGGTGTGGATGAGGACAATGGAAATGAAGGAAA	545
Qy	8778	GGTTAGAAGGCCTGTGGTACCGGTTGGTAGATAGCTCTTCGTGCTTTCTCCATATGGAGT	8837
Db	546	GGTTAGAAGGCCTGTGGTACCGGTTGGTAAATAGCTCTTCGTGCTTTCTCCATATGGAGT	605
Qy	8838	GAGAGT GCTTGGATGTGATTTCCTTCAAAGTCAGGTCTAGGAGACTCAGGATGCCTAATCT	8897
Db	606	GAGAGT GCTTGGATGTGATTTCCTTCAAAGTCAGGTCTAGGAGACTCAGGATGCCTAATCT	665
Qy	8898	AGAGGTAAGAACATTGTGAGGAAAGCCAGTGAATT CAGTCTTGTGCATGCTGACTTTGAA	8957
Db	666	AGAGGTAAGAACATTGTGAGGAAAGCCAGTGAATT CAGTCTTGTGCATGCTGACTTTGAA	725
Qy	8958	GTACTTTT TGAAGAGCCAAGTGAATTATCCA CAGGACAGGACCAAATCTTACCTGGTTC	9017
Db	726	GTACTTTT TGAAGAGCCAAGTGAATTATCCA CAGGACAGGACCAAATCTTACCTGGTTC	785
Qy	9018	TTCCCCAGGCCGACTAGTCCACAACAGGAAATAAAAAGAGTTGCCCGATACCAAGGTGT	9077
Db	786	TTCCCCAGGCCGACTAGTCCACAACAGGAAATAAAAAGAGTTGCCCGATACCAAGTTGT	845
Qy	9078	ACTAGTCCATTCTCACA CTGCTATGGGGAAATACCTGAGACTGGGTAATTTATAAAGGGA	9137
Db	846	ACTAGTCCATTCTCACA CTGCTATGGGGAAATACCTGAGACTGGGTAATTTATAAAGGGA	905
Qy	9138	AAAGGTTTAAATTGACTCACAGTTCTAGATGGCTGGGGAGGCTTCAGGAAACTTACAATCA	9197
Db	906	AAAGGTTTAAATTGACTCACAGTTCTAGATGGCTGGGGAGGCTTCAGGAAACTTACAATCA	965
Qy	9198	TGGCAGAAGGCACCACTTCACAGGGTGGCGGGAGAGAGAATGAGTGCC CAGCGAAGGGAG	9257
Db	966	TGGCAGAAGGCACCACTTCACAGGGTGGCGGGAGAGAGAATGAGTGCC CAGCGAAGGGAG	1025
Qy	9258	AAGCTCCTTATAAAACCATCTGTTCTCCTTATAAAGATCTCTTAATAAAACCGTCAGAGA	9317
Db	1026	AAGCTCCTTATAAAACCATCTGTTCTCCTTATAAAGATCTCTTAATAAAACCGTCAGAGA	1085
Qy	9318	ACTATCTCATTCACTATCAGGAGAAGAGCATGGGGGAACCGCCCCCATGATTCAGTTTAC	9377
Db	1086	ACTATCTCATTCACTATCAGGAGAAGAGCATGGGGGAACCGCCCCCATGATTCAGTTTAC	1145
Qy	9378	TCCACCTGGTCCCGCCCTTGACATGTGGGTGTTATTACAATTTAAGGTGAGATTGGGTG	9437
Db	1146	TCCACCTGGTCCCGCCCTTGACATGTGGGTGTTATTACAATTTAAGGTGAGATTGGGTG	1205
Qy	9438	GGGACACAGAGCCAAACCATATCACAAGGCTTTCTCCTCCTTGCTGGGATTGTACCCATA	9497
Db	1206	GGGACACAGAGCCAAACCATATCACAAGGCTTTCTCCTCCTTGCTGGGATTGTACCCATA	1265
Qy	9498	GCCTCTTTCTGAGTCCTCTCTCTTTTAGCCTCTTTATGCCTGCAGTGCATCCTTATACCA	9557
Db	1266	GCCTCTTTCTGAGTCCTCTCTCTTTTAGCCTCTTTATGCCTGCAGTGCATCCTTATACCA	1325



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[illegible]

## Conclusion

No claim is allowed.

SEQ ID NO:1 (full length) is free of the art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Zeman whose telephone number is (571) 272-0866.

The examiner can normally be reached on Monday- Thursday, 7am -5:30 p.m..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew can be reached on (571) 272-0787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



ROBERT A. ZEMAN  
PRIMARY EXAMINER

September 25, 2007